

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF MARYLAND

3
4 UNITED STATES OF AMERICA

5 VS.

CRIMINAL NO. CCB-08-0091

6 BALRAJ NAIDU

7 DEFENDANT

8 Baltimore, Maryland

9 December 16, 2010

10
11 The above-entitled case came on for sentencing
12 before the Honorable Catherine C. Blake, United States
13 District Judge

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15
16 A P P E A R A N C E S

17
18 For the Government:

19 James G. Warwick, Esquire
20 Rachel Yasser, Esquire

21
22 For the Defendant:

23 William B. Purpura, Jr., Esquire

24
25 Gail A. Simpkins, RPR
Official Court Reporter

P R O C E E D I N G S

THE COURT: Do you want to call the case, Mr. Warwick?

MR. WARWICK: Yes, Your Honor. This is the matter of the United States of America versus Balraj Naidu, Criminal Number CCB-08-0091. The matter is before the Court for an imposition of sentence.

THE COURT: All right. Thank you.

MR. PURPURA: Judge Blake, good morning.

THE COURT: Good morning.

MR. PURPURA: William Purpura on behalf of Balraj Naidu, who is present with me. We have received the presentence report. We reviewed the presentence report in detail.

THE COURT: All right. Thank you.

I am sure, Mr. Warwick, you have reviewed it as well?

MR. WARWICK: I have. Your Honor, may I just ask the Court to attend to some housekeeping matters first?

THE COURT: Certainly.

MR. WARWICK: As the Court will recall, the defendant was extradited to the United States only on Counts 2 and 6 of the indictment. Therefore, Counts 1, 3, 4 and 5 need to be dismissed.

1 THE COURT: All right.

2 MR. WARWICK: The Court dismissed Count 6 on a
3 Rule 29 motion during trial.

4 Just to clarify for the record, Count 2 of the
5 indictment was submitted to the jury as Count 1, just
6 for purposes of the verdict sheet.

7 THE COURT: But so far as the docket, it should
8 probably be reflected as Count 2.

9 MR. WARWICK: As Count 2, yes, exactly.

10 THE COURT: That's fine.

11 Well, obviously, as you all know, I have to
12 calculate the Advisory Guideline range. So let me go
13 through the presentence report and see where we have
14 agreements and disagreements.

15 The offense, of course, Mr. Naidu was convicted
16 of is conspiracy to provide material support to a
17 foreign terrorist organization.

18 The base offense level under the Guideline 2M,
19 as in Mary, 5.3 is 26. There is an increase of two
20 under that same Guideline because the conspiracy
21 involved the provision of dangerous weapons or
22 firearms.

23 Now the presentence report adds a two-level
24 adjustment, upward adjustment for Mr. Naidu being an
25 organizer or leader, and a two-level upward adjustment

1 for obstruction of justice for allegedly testifying
2 falsely in the course of trial.

3 Are you pressing either of those, Mr. Warwick?

4 MR. WARWICK: Your Honor, the government is
5 pressing the two for role in the offense. I think it
6 is also colorable, there is a colorable argument as
7 far as the defendant's testimony.

8 The defendant did admit certainly on
9 cross-examination what could be construed as all the
10 elements of the crime. However, he did try to
11 minimize his role by repeatedly saying all I did was
12 make phone calls. Everything had to be drawn out of
13 him in detail, but there certainly was a lack of
14 candor, at least in the initial part of his testimony.

15 So I think the Court could certainly construe
16 that as grounds for obstruction, but I don't think I
17 need to say anything more on that.

18 But on the role, the government does feel
19 strongly he was an organizer.

20 THE COURT: How would you rank him as an
21 organizer compared to any of the other people involved
22 in the conspiracy? I don't believe anybody else got
23 that role adjustment.

24 MR. WARWICK: No, they did not.

25 The Court will recall from the testimony that

1 Mr. Santhirajah, who was the financier -- he is the
2 gentleman who is still fighting extradition from
3 Australia on this matter -- he sought out Haniffa Bin
4 Osman, with whom he had somewhat of a business
5 relationship with, and asked Mr. Osman if he could
6 help provide a source of weapons for the LTTE.

7 Mr. Osman didn't have any contacts. He didn't
8 have any sources for that type of activities. He went
9 to Balraj Naidu. That was in or about January or
10 February of 2006.

11 It was Mr. Balraj Naidu who brought in others,
12 such as John Johney, who was referenced extensively in
13 the testimony and in the e-mails, and from that point,
14 Mr. Naidu took the lead in trying to find suppliers of
15 arms.

16 There were trips to Hong Kong. There were trips
17 to Guangzhou, China. There were trips to Indonesia.
18 There were contacts that Mr. Naidu spearheaded to
19 obtain these weapons, several in China, in Thailand,
20 in Indonesia, in the Philippines, as well as reference
21 to someone who could provide arms from North Korea.

22 The weapons list that originated from Mr.
23 Santhirajah were sent to all of these people through
24 Mr. Naidu. He organized the activity with these
25 various potential sources so that weapons could be

1 obtained. He spearheaded it.

2 It was his contacts between Mr. John Johney and
3 the defendant that brought them in contact with
4 several Indonesians, and those Indonesians, you may
5 recall, Bambang Wyoduno and another Bambang Sudito,
6 who, by the way, the United States have tried to
7 identify through the Indonesian authorities, and we
8 have been unsuccessful.

9 But those two individuals, Bambang Wyoduno and
10 Bambang Sudito, had a source, and they connected their
11 source of weapons, Haji Subandi, with the defendant,
12 and that's how the deal took place. But it was Mr.
13 Naidu's efforts through all these various countries,
14 and all of these various arms dealers, that led to the
15 contact with Subandi, and in turn, with the undercover
16 business.

17 He was at the forefront of this, Your Honor. He
18 reported initially back to Santhirajah as well. He
19 would e-mail Santhirajah updates on the status of the
20 arms negotiations. He was the individual who was
21 trying to negotiate a lower price with Haji Subandi
22 for some of these weapons once the contact had been
23 made through Subandi with the undercover agents.

24 He was not passive in the way that some of the
25 other participants were, you know, go one by one.

1 For example, Subandi was an arms dealer, but
2 that was his role. He was to supply the arms through
3 the undercover business. He was eventually moved to
4 the side because there was a conflict between some of
5 the other Indonesians and Mr. Subandi.

6 THE COURT: And Mr. Subandi got a two-level
7 downward adjustment for a minor role, I believe.

8 MR. WARWICK: That was requested by his counsel
9 and granted by the Court. That's correct.

10 As far as General Wotulo, his role was to
11 provide the security through the Indonesians waters,
12 and he was to be paid for his contacts in providing
13 that service.

14 We had Mr. Varatharasa, and he was a Tamil
15 Tiger. He was a fighter. His role was not to secure
16 the weapons. His role was to inspect the weapons. He
17 had a very, very finite role. He was in it because he
18 was patriotic to that cause. Balraj Naidu was in this
19 for the money that he stood to make from it.

20 In our pretrial discussions with Mr.
21 Varatharasa, he stated clearly that Balraj Naidu was
22 only in this for the money, and that was obviously the
23 incentive, the motivation. Ten percent of these
24 significant arms deals -- the one in question was to
25 be \$900,000 -- would have rendered a commission to Mr.

1 Naidu of roughly \$90,000. That certainly is a
2 substantial amount.

3 The other role adjustments in this matter would
4 certainly be appropriate for Mr. Santhirajah if he is
5 ever brought to this court to stand trial on these
6 offenses.

7 But Mr. Bin Osman, and I'm trying to recall
8 precisely what I said during the sentencing
9 proceedings regarding Mr. Bin Osman, he cooperated
10 more than anybody else who had been previously
11 sentenced at that time, so he was more deeply involved
12 than anyone else who had been previously sentenced as
13 well.

14 But he was the conduit between Naidu and
15 Santhirajah, and Santhirajah preferred to act through
16 Naidu rather than, I mean through Osman rather than
17 through Mr. Naidu, and there was a shift in the
18 e-mails somewhere around May or June of 2006 which
19 reflected that.

20 So certainly as far as culpability, Mr. Osman
21 was more culpable than Subandi and Wotulo and
22 Varatharasa. But with regard to being an organizer
23 and putting the buyers in touch with the sellers, that
24 was Mr. Naidu's role, and he certainly organized that
25 and involved people in five different countries.

1 That's the reason that I think a two-level adjustment
2 upward is appropriate under the facts of the case, as
3 established by the e-mails, established by the
4 testimony.

5 As I said, all of those weapons lists were
6 forwarded not by Bin Osman, but by Mr. Naidu. I think
7 that's one of the most telling bits of evidence as far
8 as his role in this conspiracy.

9 THE COURT: All right. Thank you.

10 Mr. Purpura.

11 MR. PURPURA: Yes, Your Honor.

12 Can I have the overhead, the Elmo be put on,
13 please?

14 Judge, did you want to hear from me as to
15 obstruction of justice?

16 THE COURT: No.

17 MR. PURPURA: Thank you.

18 On the role, as I indicated in my sentencing
19 memo, I believe in fact Mr. Naidu is a minor role in
20 this case, and there was nothing in trial which should
21 change that.

22 If the Court recalls, let's put up, if I can,
23 just the list of players, how the whole thing started
24 out.

25 Mr. Santhirajah, the gentleman in Australia, he

1 was organizing arms for LTTE. We will talk about them
2 in a second. His immediate contact was Haniffa Bin
3 Osman. Haniffa Bin Osman coordinates everything,
4 especially in Singapore, and he does not get a role
5 adjustment.

6 His next contact in Singapore was Eric Pala. It
7 was not Balraj Naidu immediately.

8 Eric Pala then contacts Balraj Naidu. He
9 contacts Balraj Naidu because he knows Mr. Naidu. He
10 knows Mr. Naidu has done work in other places, such as
11 the Philippines, not with arms; but he has
12 international contacts in the business that he was in.

13 He knew him because of that, number one. He
14 knew that he was Hindu, number two. He knew that he
15 spoke Tamil and was sympathetic to the Tamil plight,
16 number three. So he contacts Balraj Naidu.

17 Well, Balraj Naidu, despite the government's
18 early indication that he had contacts and dealt with
19 arms in the past, doesn't know anybody, and that was
20 clear. So what he does, he doesn't have any
21 independent contacts with people. He contacts this
22 person, John Johney. John Johney is the Ph.D. in
23 religious studies apparently who does also
24 international travel and knows people internationally.
25 It was then John Johney.

1 This is a very loose-knit group of people who
2 are making contacts looking for arms, and very
3 unsophisticated.

4 Apparently he then contacts someone, who is the
5 Indonesian arms supplier. That was the gentleman who
6 wanted the money up front. That was the \$10,000 we
7 heard about, that 5,000 was given to Mr. Naidu by Mr.
8 Thulasi and 5,000 to Mr. Austen by Mr. Thulasi, and
9 this money was then given to General Tio. Because
10 they are so sophisticated in their arms dealing, and
11 because he is such a good leader in the arms deal,
12 General Tio took the \$10,000, although he wanted
13 \$20,000, and took off, never to be heard from again.

14 The next attempt to get weapons was again John
15 Johney to Naidu to Mr. Dunno, D U N N O. He was the
16 African native who also lived in Singapore, who Mr.
17 Naidu and John Johney knew at that time. He
18 introduced him to Bin Osman.

19 They went to a meeting or two meetings at least
20 in Mainland China and in the Philippines, and in both
21 areas apparently they wanted seed money again. Mr.
22 Thulasi was tired of throwing money away, didn't trust
23 what was going on, and nothing happened there. So
24 nothing happened at that point.

25 The next step was again John Johney, and

1 everyone -- I mean there's how the chain went, from
2 Thulasi, to Osman, to Pala, Naidu, to John Johney.
3 John Johney seems to have the most contacts, and John
4 Johney, my recollection is, knew General Wotulo, who
5 knows Haji Subandi, and this is all unbeknownst to Mr.
6 Naidu. Now Mr. Naidu doesn't know what was going on.

7 Haji Subandi has been dealing in international
8 arms since 2004. He has been dealing with the
9 undercover since 2004, and that was all brought out at
10 the time of the trial. So Subandi is in numerous
11 deals and sophisticated and knows what he is doing
12 with arms.

13 Haji Subandi has his contact, and his contact is
14 the sting operation person. That's David Austen,
15 which was his undercover name, and it is Damon Ostis,
16 who is the agent.

17 Now Haji Subandi takes over. From all the
18 e-mails, Haji Subandi is running everything. He's
19 telling Naidu, and he is also telling Mr. Bin Osman
20 that I know what I'm doing here, here's what we need,
21 and here's what's going on.

22 Haji Subandi is getting his walking orders then
23 from Damon Ostis, David Austen, the undercover at that
24 point. They negotiate the arms deal, and Naidu had
25 nothing to do with it at that point, nothing, nothing.

1 He was the conduit of the e-mails. Yes, he
2 wanted to stay in. Yes, he was interested in the
3 commission. There was no question about it.

4 The 10 percent commission is whole cloth. There
5 was never any definition as to what the commission
6 would be. Whether it was 1 percent or 1.5 percent or
7 2 percent, that was whole cloth, and we know it's
8 whole cloth because Bin Osman eventually completes the
9 deal. That's why it's comedic and it's somewhat
10 laughable.

11 When Mr. Bin Osman goes to the United States, he
12 goes to Baltimore in July, July 25th of 2006. At that
13 point forward, other than the drive to the airport,
14 because that's what he does, he drives Mr. Bin Osman
15 to the airport, there is no other e-mail contact, and
16 up to that point there have been hundreds of e-mails.
17 We've heard them all, for months, going back and
18 forth, e-mail traffic right and left.

19 From that point forward, when Subandi, or Bin
20 Osman goes to the United States, there's no more
21 contact, none when he returns, not even a peep, except
22 to the extent that he tells Naidu nothing happened,
23 the deal is not going forward.

24 So Naidu is not leading anybody at that point.
25 Subandi is going forward, with or without -- excuse

1 me. Bin Osman is going forward, with or without
2 Subandi, and he is making the deal happen, because he
3 is now dealing directly with the undercover, Damon
4 Ostis, without Naidu. So he's leading absolutely
5 nothing.

6 They go on to Guam. They all get arrested.
7 Osman and Wotulo get arrested in 2006, in September
8 2006.

9 Naidu is back in Singapore, thinking the deal is
10 off, and there wasn't one single e-mail presented from
11 July until 2006 involving Mr. Naidu, because there
12 weren't any. His whole thought process was I lost, I
13 don't get my commission, I don't get to help, if I
14 wanted to help, the LTTE people, and I'm out of it, I
15 don't know what's going on.

16 He doesn't realize what's going on until it
17 appears in the paper the arrest of the people in Guam,
18 and he got arrested himself about three years later.

19 So really, that's the scenario. That's what
20 came out at trial. Those are the facts.

21 We heard the testimony of Bin Osman. That's
22 exactly what Bin Osman said. Naidu is out of the
23 deal. When I came back to Singapore, I told Naidu
24 there was no deal, and there was no further contact.

25 So he is clearly not a leader or organizer at

1 all. At best, he's a minor role. There's no question
2 that he tried to stay in the deal with the e-mails.
3 He wanted what he thought would be a commission.
4 There's no question about that. But that doesn't make
5 him a leader or an organizer. In fact, it makes him a
6 very minor role.

7 He is just one of the steps in the chain of
8 events which occurred which leads us to the undercover
9 agent and the deal. That's all he is in this case,
10 period, nothing more, nothing less. No particular
11 expertise, as a matter of fact, a lack of expertise.

12 If he had international arms dealings, if he had
13 international arms experience like Mr. Subandi, he
14 would have contacted someone, perhaps Damon Ostis.
15 Maybe he would have contacted Damon Ostis. But he
16 didn't have that, so there is no leadership.

17 Quite frankly, there is leadership now only
18 because it's a way of suggesting that he went to
19 trial, so we're going to get everything we possibly
20 can get under the Guidelines. You took up our time,
21 and you should be punished.

22 If you look at it, you look at the facts, he is
23 clearly not a leader. His role is minor, especially,
24 especially, if the Court considers that Haji Subandi,
25 Haji Subandi had his e-mails. He was prolific. He

1 was the person. He was the glue between Haniffa Bin
2 Osman, between Thulasi.

3 He was the glue that was pushing this deal and
4 holding on. He was the glue that held David Austen,
5 the undercover arms dealer, in. He was going back and
6 forth. He was negotiating with both sides on a
7 constant basis. If he's a minor role just because he
8 gets cut out at the end, then Naidu certainly is a
9 minor role, because he was clearly cut out.

10 If the Court recalls, there were e-mails from
11 Haji Subandi at least twice, which I have noted here,
12 where they said Naidu is out, we don't want him in.

13 So Haji Subandi is taking that type of
14 leadership role, saying Naidu doesn't know what he is
15 doing, he's out of this thing. Those e-mails came
16 prior to the Baltimore trip.

17 So with Subandi, with his 2004 contacts, dealing
18 in arms all those years, if he gets a minor role,
19 clearly, clearly, clearly, Balraj Naidu, who was
20 candidly inept in what he was doing -- looking for a
21 written contract.

22 That was his testimony. He was looking for a
23 written contract with Mr. Bin Osman so he could know
24 exactly what his percentage was, and he wanted to
25 present that written contract to a lawyer in Singapore

1 so he knew exactly what was going on.

2 His testimony on his direct examination -- the
3 cross-examination lasted maybe 10, 15 minutes. There
4 was probably no need for much more than that. On his
5 direct examination, he admitted every single point.

6 The only thing, the only reason that he was
7 going to trial, the only thing he contested, and still
8 contests, is that he did not know that in 1997, the
9 United States State Department declared the Tamil
10 Tigers a foreign terrorist organization, because he
11 said that before. He said it in the initial proffer.

12 He came in and proffered to the government when
13 his case first came in, and he told them exactly what
14 his activities were. He didn't leave anything out.
15 The government had that proffer, and if he had said
16 anything differently, Mr. Warwick would have
17 cross-examined him; but there was no need to, because
18 it was identical.

19 At that point he said I didn't know it was a
20 foreign terrorist organization. During the trial he
21 got up and said I didn't know it was a foreign
22 terrorist organization, and today he still says I
23 didn't know it was a foreign terrorist organization.

24 Do you admit you got a sniper rifle? Yes.

25 Do you admit you got a grenade launcher? Yes.

1 Did you know that these acts were occurring in
2 Sri Lanka? Yes.

3 Did you know there was a civil war in Sri Lanka?
4 Yes, we all knew about it.

5 Did you know that the Tamils were being
6 discriminated against, that there was a genocide going
7 on for years in Sri Lanka? Yes.

8 The whole issues was the United States in 1997
9 took a side, and the side they took was the Sri Lankan
10 government's side. At that point, they were
11 designated a foreign terrorist organization, and his
12 knowledge was, and he continuously denies, that he
13 didn't know it was a foreign terrorist organization,
14 and that's why we are here. I will respond to that in
15 probably shorter detail in another moment, but
16 clearly, he did not.

17 To even suggest that there is an upward
18 adjustment for his testifying is ridiculous. He was
19 honest and candid to a fault, to a fault. I have
20 never seen it before, the way he honestly said what he
21 did, and the same thing with his wife. So there was
22 no perjured testimony.

23 As unfortunate this whole thing is, he is not a
24 leader, organizer. As unfortunate this is, he is a
25 person with a role that should be a minor role.

1 Thank you.

2 THE COURT: All right. Thank you. Any other
3 guideline-related issues that we have not talked
4 about?

5 MR. PURPURA: None by defense, Your Honor.

6 MR. WARWICK: I don't believe so, Your Honor.

7 THE COURT: Okay. All right.

8 Well, regarding the two disputed issues, first
9 of all, on the suggested obstruction, I think that is
10 clearly non-applicable here.

11 Mr. Naidu testified. Even assuming that Mr.
12 Warwick is correct, and that in some instances he
13 minimized his involvement, overall, clearly he
14 admitted a great deal of the conduct that the
15 government then appropriately relied on to argue to
16 the jury that he should be convicted.

17 The one point that has been focused on about
18 whether he knew that the LTTE had been designated as a
19 foreign terrorist organization as opposed to knowing
20 about acts of terrorism and so forth is the one point
21 on which the jury did not find against Mr. Naidu.

22 I certainly don't see a basis to find that he
23 willfully testified falsely as to some material matter
24 when I consider his overall testimony as a whole. So
25 I am not going to apply the two-level upward

1 adjustment under 3C1.1.

2 Nor am I going to apply the two-level upward
3 adjustment for being an organizer or a leader. I
4 think that it is important in cases such as this,
5 conspiracy, and the number of people involved, to look
6 at that role adjustment in light of everyone else's
7 involvement and everyone else's treatment under the
8 Guidelines as well. It's clearly a relative
9 culpability adjustment.

10 I don't think that in terms of this conspiracy,
11 and certainly what was ultimately accomplished, that
12 Mr. Naidu should be described as a leader or
13 organizer, particularly in comparison to others
14 involved, including Mr. Bin Osman or even Mr. Wotulo,
15 whose sentencing I believe it was that Mr. Warwick
16 pointed out Mr. Wotulo bringing Mr. Subandi into the
17 picture and described Mr. Wotulo as active.

18 It seems to me that Mr. Naidu certainly was a
19 negotiator. He was a broker. He was trying to put a
20 dealer together with a buyer. He was not particularly
21 successful. He was excluded from the final deal.

22 I don't see that there is an upward level
23 adjustment warranted; but I also cannot say, having
24 heard the entire trial evidence, that a minor role
25 adjustment is warranted.

1 He was quite active, particularly in the
2 beginning part of the conspiracy. He did stay in
3 communication through e-mails. He clearly hoped to
4 get a commission.

5 While he was cut out to some extent after the
6 July events, he had I think played a very active role
7 up until, as I say, up until that point, and his
8 relative culpability should not be described as a
9 minor.

10 Mr. Subandi, by comparison, came into this
11 later, was also cut out at the end. I think Mr. Naidu
12 had more substantial, although unsuccessful, efforts
13 involved in this conspiracy than Mr. Subandi. I don't
14 see that a minor role adjustment is warranted.

15 So my conclusion in terms of the Advisory
16 Guideline range is that --

17 MR. PURPURA: Judge, I'm sorry. I apologize.

18 THE COURT: I'm sorry?

19 MR. PURPURA: There was one more Guideline
20 issue.

21 THE COURT: Oh, okay.

22 MR. PURPURA: It was acceptance of
23 responsibility. I believe that he --

24 THE COURT: You did put that in your memorandum.

25 MR. PURPURA: -- is entitled to acceptance of

1 responsibility. The only issue which was contested by
2 Mr. Naidu has always been, in essence a legal issue,
3 whether he had knowledge that the LTTE, the Tamil
4 Tigers were designated as a foreign terrorist
5 organization.

6 As the Court did indicate, the jury could not
7 decide that. It was broken down into three sections
8 for the jury to decide. They could not decide that
9 particular issue. He admitted every other factor.

10 He has constantly admitted every other factor.
11 At the initial proffer he admitted every factor,
12 except that factor. The only reason he went to trial,
13 the only reason he testified was on the particular
14 issue that he did not know that LTTE was a designated
15 terrorist organization. So he has always accepted his
16 responsibility.

17 THE COURT: But there are two other prongs of
18 knowledge on which he could have accepted
19 responsibility and did not. There were three ways in
20 which knowledge could have been approved. Even
21 assuming that he was not willing to agree he did not
22 know about the designation, there were two other
23 prongs of knowledge that he could have admitted. He
24 could have accepted responsibility, and he did not.

25 MR. PURPURA: Okay.

1 THE COURT: I understand your argument, but I
2 don't think I can give a two-level downward adjustment
3 for acceptance of responsibility.

4 So that's going to be an offense level of 28.
5 His Criminal History Category is I. The Advisory
6 Guideline range, which, of course, is just one of the
7 factors I have to consider, would therefore be from 78
8 to 97 months.

9 I will be happy to listen to 3553(a) arguments.
10 Mr. Warwick.

11 MR. WARWICK: Your Honor, as cases like this get
12 flushed out, they become more chilling.

13 Mr. Purpura has consistently made light of the
14 fact that this was just the U.S. government's choice
15 to side with the Sri Lankan government rather than the
16 LTTE, that this was a civil war that we had no
17 interest in.

18 As Colonel Girven explained and testified in
19 detail, the LTTE was a ruthless, ruthless
20 organization. They were involved in several other
21 hundred suicide bombings.

22 They set the standard for new waves of terrorism
23 which are seen in other places throughout the world,
24 whether it's the use of smaller craft to attack larger
25 vessels, which is what they did with the Sri Lankan

1 Navy, and it was copied by the Yemeni terrorists, a
2 branch of Al-Qaeda, against the U.S.S. Cole.

3 The improvised explosive devices that were used,
4 and also the suicide vests that were used in many
5 parts of the world, including Afghanistan and Iraq,
6 were devised, tested extensively and, I hate to use
7 the word, but improved in their efficiency, the
8 detonating efficiency by the LTTE.

9 They engaged in political assassinations. They
10 extorted money within the country and outside the
11 country to support their activities. This was
12 notorious throughout Southeast Asia and South Asia.
13 It was notorious with the Tamil population in
14 Singapore.

15 Balraj Naidu, not out of sympathy and a patriot,
16 or as a member of the LTTE, but as a merchant, as a
17 broker, opted to take advantage of an opportunity that
18 was presented to him, and conspired to acquire deadly
19 weapons, grenade launchers, grenades, sniper rifles.
20 Sniper rifles are used for assassinations. Whether
21 it's a political figure or someone else that had an
22 interest contrary to the LTTE.

23 As I argued to the jury, Mr. Naidu is nothing
24 more than a merchant of death. He cared less what
25 those weapons would ultimately be used for, but he

1 knew that they would be used to kill people.

2 Mr. Varatharasa was adamant in what is also
3 reflected in many of the e-mails, that Balraj Naidu
4 was in it for the money.

5 One of the most telling statements that he made
6 in an e-mail was to one of the potential arms
7 suppliers, urging that supplier to work harder. We
8 must, we must, we must get this done. There is money
9 to be made here. If this succeeds, we will have
10 enough money to eat for a lifetime.

11 That type of mercenary attitude is what fuels
12 the illegal arms business. Personal greed drove
13 Balraj Naidu to engage in this activity. He needs to
14 be punished. There needs to be a detriment, the
15 detrimental effect so that other people do not engage
16 in this type of activity.

17 His callous disregard, Your Honor, for what
18 would be the results of his arms dealing is just
19 chilling. There is no useful, lawful, humanitarian
20 purpose for the weapons that we saw displayed in
21 court. He was in it for the money. He deserves no
22 leniency from this Court, and I would ask this Court
23 to consider a sentence at the upper end of the
24 Guideline range because it is deserving.

25 Colonel Girven outlined for us many of the

1 activities of the LTTE. He was a witness to some. He
2 was a witness to the aftermath of much of those
3 activities.

4 The fact that the civil war is over at this
5 point was not due to the fact that Balraj Naidu did
6 anything to conclude that strife, that fighting. He
7 only desired to encourage it.

8 During a time frame in 2006, Santhirajah passed
9 the information to Naidu and also on occasion to Bin
10 Osman of the urgency for the need of these weapons
11 because the LTTE was planning an offensive, which was
12 to take place in the September, October time frame of
13 2006, and that was one of reasons that Balraj Naidu
14 pressed those potential suppliers to deliver the
15 weapons as soon as possible.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Warwick.

18 Mr. Purpura.

19 MR. PURPURA: Thank you.

20 No one, particularly me, makes light of war.
21 This was, this was war. It was a civil war. There's
22 no question about it. The Court has the sentencing
23 memorandum which was filed in the Eastern District
24 before Judge Dearie. It sets out the very tortious
25 history of both sides in this war. It was a war.

1 Yes, sniper rifles are used to kill people, like
2 all weapons in war. It is not used to assassinate
3 people. It is used by our forces to kill people,
4 because that is what war is about.

5 This is a war. This is a civil war. It wasn't
6 a revolution to overthrow the government of Sri Lanka.
7 It was a civil war with marked boundaries which were
8 set centuries before, starting in the 14th Century,
9 the northern and eastern area of Sri Lanka.

10 As the Court recalls, the Sinhalese came down
11 from Northern India sometime in B.C. and the Tamils
12 came down from the southern area of India sometime in
13 the 14th Century and set the dynasty.

14 So we have marked areas in a very small country
15 and we had two very, very different types of people,
16 the Sinhalese being Buddhist, and the Tamils being
17 Hindu.

18 As a result of that, there was a persecution.
19 It was a persecution in the '60s and '70s, I'm sorry,
20 the '40s, '50s, '60s, with the independence of Sri
21 Lanka from England, and it was against the Tamil
22 population. I believe that's all in the sentencing
23 memorandum as well.

24 It was a war. War is bad. I mean obviously I
25 argued that. You heard me say that. The Court knows

1 that. On both sides there are no heros. Nothing new
2 is invented in this particular war. Attacks of small
3 ships against larger ships is nothing new.

4 We had Japanese fighter pilots committing
5 suicide raids in War World II. Going back to the
6 Civil War, we had smaller vessels attacking larger
7 vessels, trying to set them on fire.

8 There is nothing new, unfortunately, about war.
9 It becomes better developed as time goes on, but there
10 is nothing particularly new.

11 There were atrocities on both sides, and it's
12 all wrong. There's no question it's all wrong, the
13 war itself.

14 But the people, the government of Sri Lanka is
15 not with clean hands in this particular case, and they
16 are still not with clean hands. The government's
17 witness, Colonel Girven, admitted that, and testified
18 to that. He acknowledged that the United States State
19 Department had listed the government of Sri Lanka in
20 their yearly report in 2008 and 2009 as a human rights
21 violation, and a country which is not negotiating or
22 letting us and the United Nations take a look at them.
23 He acknowledged that.

24 It's not only the United States State
25 Department. It's the Human Rights Watch. It's the

1 UK, United Kingdom Department of Internal Development.
2 It's the House of Commons Report in Britain. It's the
3 European Commission in 2008 and 2009 report. It's the
4 United Nations Report on Human Rights Violations.

5 Each one of those reports consistently now are
6 claiming -- the war was over in 2009. It was a war.
7 It was a war.

8 In 2009, they surrendered, but the atrocities
9 are continuing. The United States acknowledges that.
10 Colonel Girven acknowledges that. The European Union
11 acknowledges that.

12 The only people that have not acknowledged that,
13 and it is still today as we sit here in 2010, is the
14 government of Sri Lanka, because they refuse to allow
15 the United Nations in. They refuse to allow any
16 outside intervention because they believe that that
17 again will stoke the fire, as they say, of discontent
18 in their country.

19 So everyone, every outside nation that takes a
20 look at this continues to suggest that the atrocities
21 against the Sri Lankan government continues against
22 the people of Tamil.

23 So it was a war, and yes, wars are ugly. It was
24 ugly in World War II. It was ugly when you dropped an
25 atomic bomb and civilians were obliterated and

1 generations were affected after that. War is ugly,
2 yes. That really is not the issue here. If you are
3 going to punish someone for war, you've got a lot of
4 people you can punish for war.

5 Mr. Naidu, his activities, he has been arrested.
6 He has been arrested in his home country, in
7 Singapore. He was detained in Singapore. When he was
8 arrested, it hit the national newspaper in Singapore,
9 which is the one national newspaper they have.

10 He has been brought here to the United States.
11 He has now been in custody in the United States, half
12 of a world away from his family, from his culture,
13 from everything he holds dear for one year. I believe
14 December 18th was his arrival in this country. So he
15 has been here for a period of time.

16 THE COURT: Would September 23, 2009 then be in
17 fact the appropriate date?

18 MR. PURPURA: It is. I was wrong. It is the
19 absolute appropriate date. So he has been in custody.

20 You received the letters from his wife. You
21 heard her testify. You know what has happened. He
22 wasn't living the life of an arms dealer, despite his
23 actions in this particular case.

24 I believe truly he felt this was an
25 international deal he was getting involved in for

1 arms, and it was a legitimate deal. He was going to
2 seek the help of a lawyer for the contract to set up
3 the commission. There's no question.

4 We have arms dealers in the United States. We
5 supply arms to tons of countries, and arms are used to
6 kill people. Again, that's not the issue.

7 The business that his wife and he had has been
8 lost. His wife is now going into bankruptcy. There
9 was a large loan taken out just before he was
10 arrested. I think it was close to a million dollar
11 loan, and that has defaulted.

12 As a result of that, all their property,
13 literally everything in their little flat they had,
14 including their flat, has now been bankrupt and is
15 being sold. I spoke with the wife, and the bankruptcy
16 proceedings are going through on that as well.

17 His youngest son, who is mandatory military age,
18 was in the military, he is out of the military now
19 pending leave because of depression as a result of
20 literally coming here and sitting in the trial, seeing
21 what happened to his father in this case.

22 The two daughters, the twin daughters are 20
23 years old. They were in the university. They have
24 come out of the university to help maintain and help
25 their mother.

1 The mother has indicated, and his wife has
2 indicated that she has taken a local job washing
3 dishes now. She wears rubber gloves and she has an
4 infection on her hands from wearing the rubber gloves.

5 So there has been a huge impact. Not only has
6 it been a huge impact on Naidu, all this has been
7 disseminated in a very small political community, in
8 which Mr. Naidu is very political, and that has
9 destroyed himself, ostracized him and his family. So
10 there is a huge punishment there as well.

11 So the word has gotten out. The word has
12 clearly gotten out in Singapore. He clearly has been
13 punished.

14 This war, and it was a civil war, not a
15 revolution to overthrow a government, was over in
16 2009. The results are still not good. What's going
17 on by far is not good, but it's over, at least as far
18 as the United States is concerned at this point, not
19 for the people of Sri Lanka, and especially not for
20 the Tamils, be it Muslim and/or Hindu. So that's
21 over.

22 What I am asking the Court is we can end this
23 too. There is so much here based on the 3553(a)
24 factors, based on the type of war that was going on,
25 based on Mr. Naidu's background. He is 47, 48 years

1 old, no criminal history whatsoever. Enough is
2 enough, and you can send him home.

3 You can find time served, literally 18 months,
4 time served. He has been here a year. He has another
5 month of incarceration. It's a substantial sentence,
6 a substantial punishment. He has been punished. The
7 word has gone out. It has gone out internationally.

8 You have a representative from the Singapore
9 Embassy here. It has gone back to Singapore. They
10 know what happens in these cases. People's eyes have
11 been opened up. There is no need, and nothing else is
12 accomplished by giving a longer period of time of
13 incarceration.

14 Mr. Bin Osman and everybody else who we have put
15 up there on that screen, whatever period of time, and
16 really, they have not been lengthy periods of time,
17 have been released, have been back in their country,
18 and they are now free. There is no reason, there is
19 no good reason to further detain Mr. Naidu.

20 I ask the Court to consider a very short period
21 of time, 18 months, and/or time served, and send him
22 home.

23 He is still not released when he goes home. Who
24 knows what kind of charges may still be pending in
25 Singapore? I don't know, and I don't think the

1 government can tell us for sure what will happen when
2 and if he is released back to Singapore, where he must
3 go.

4 I have nothing further, Judge, unless the Court
5 has any questions.

6 I have talked to Mr. Naidu numerous times, and I
7 don't believe he has anything further to say.

8 Is there anything you wish to say?

9 Did you hear him?

10 THE COURT: I'm afraid I couldn't hear you, Mr.
11 Naidu. You don't have to speak, but you have the
12 right to speak if there is anything you would like to
13 say.

14 THE DEFENDANT: I just would like to be with my
15 family, Your Honor.

16 THE COURT: All right. Anything else that
17 anybody needs to say at this point?

18 MR. PURPURA: The other point, I'm sorry, just
19 about war in general.

20 War crimes occur, and war crimes are punished in
21 criminal courts, war courts that have been designated.
22 We had that in Vietnam. We had that in World War II.
23 We had that in post World War II.

24 Atrocities are not being prosecuted in Sri
25 Lanka, and people are not being brought to justice.

1 People being brought to justice are the Tamils over
2 here for their participation.

3 MR. WARWICK: Judge, I just need to make one
4 point, and that is simply this:

5 The atrocities in Sri Lanka, the end of the war,
6 whether or not the Sri Lankan government is
7 cooperating with the UN and other agencies is
8 irrelevant.

9 That man over there only wanted to make money by
10 selling guns that were going to be used to kill
11 people. That was his only interest. He wasn't
12 interested in whether the Tamils were getting justice.
13 He was interested in how much money he could make, and
14 all he cared about was that money. He didn't care who
15 would get killed, who would suffer, and that's the
16 most egregious part of this entire case.

17 THE COURT: Okay.

18 MR. PURPURA: My silence is not agreement with
19 that. The Court has heard his background, and why
20 they sought him out was because he was a Tamil who
21 could speak Hindu.

22 THE COURT: Thank you. I am going to take a
23 short recess until about 12 o'clock, and I'll be back.

24 (A recess was taken.)

25 THE COURT: Thank you all for your

1 presentations. I do now have to consider, in addition
2 to the Advisory Guideline range, the factors under
3 3553(a). It presents a number of very difficult
4 issues.

5 First of all, the nature and circumstances of
6 the offense, obviously this is a serious crime. Mr.
7 Naidu, along with co-defendants, was involved in
8 providing weapons, or attempting to, to a terrorist
9 organization.

10 I don't think that this is really a matter of
11 the relative culpability between the LTTE and the Sri
12 Lankan government, or the wisdom of the State
13 Department designation. Based on what I heard at
14 trial, there is really very little dispute that the
15 Tamil Tigers are, or were engaged in numerous acts of
16 violence that could be described as terrorism,
17 including against at least civilian facilities, such
18 as the commercial airlines that were mentioned, and I
19 don't think there is any dispute that Mr. Naidu knew
20 that's where the weapons were going, and that he was
21 willing to do that for money.

22 I think on the other hand we have to be careful
23 and not to react simply because of the weapons that
24 were involved or what we saw displayed in the
25 courtroom.

1 It is an unfortunate fact that arms dealing is
2 frequently a legitimate business and arms are sold
3 frequently for the purpose of being involved in war,
4 and war is recognized and authorized in many circles.

5 Sometimes it can be difficult, and it is really
6 a political question, but not for me, between what you
7 described as war and what you described as terrorism.
8 We might like to see all that stopped, but it has not
9 been, and is not likely to be in the immediate future.

10 Mr. Naidu's history and characteristics, he has
11 no criminal record. As I recall, he was a government
12 employee for much of his life, and then has tried to
13 make money in a variety of ways to support his family.

14 He is a foreigner, if you will. He is not a
15 citizen of this country. He has been in custody. He
16 didn't come here voluntarily, and he has been in
17 custody in a foreign country, which I think there is
18 an additional degree of punishment to that, to being
19 in custody in a land where you are alone, and not a
20 citizen.

21 In terms of deterrence, I think it is clear that
22 Mr. Naidu has suffered a sufficient impact to deter
23 himself personally, the loss of his business and his
24 home, the impact on his family. I don't think there
25 is a great deal of need to protect the public from Mr.

1 Naidu personally.

2 However, I understand that deterrence generally
3 also has to be considered at stopping the illegal arms
4 trade, and this was. The illegal arms trade is
5 important, and it is a serious matter that requires a
6 just punishment.

7 Another extremely important factor for me,
8 however, in this sentencing, as in any sentencing, is
9 the relative culpability of the persons that are
10 involved and that have come before me for sentencing.

11 I will be corrected if I am wrong, but I believe
12 the longest sentence that has been imposed is on Mr.
13 Varatharasa of 57 months. Now he did plead guilty and
14 accept responsibility.

15 On the other hand, Mr. Varatharasa, of course,
16 is the actual member of the Tamil Tigers, and under
17 the theory of this case, is a terrorist himself, and
18 certainly was involved in what those weapons were
19 going to be used for. So I need to take that into
20 account as well.

21 Considering all these things and the seriousness
22 of the offense, and also the effect of this
23 prosecution on Mr. Naidu, and the sentence given to
24 Mr. Varatharasa, I believe that I cannot give more
25 than that to Mr. Naidu. I do think that a sentence of

1 the same amount, however, is appropriate.

2 The sentence is going to be 57 months in the
3 custody of the Bureau of Prisons. That is going to be
4 followed by a period of two years of supervised
5 release, in which obviously the major condition is
6 that Mr. Naidu will cooperate with the removal
7 proceedings and not return to this country, unless
8 authorized to do so.

9 I am going to suspend drug treatment. That
10 doesn't appear to be an issue.

11 I am required to impose a \$100 special
12 assessment. His financial circumstances don't permit
13 imposition of a fine.

14 For all the reasons I have just explained, I
15 think that that is an appropriate, sufficient, without
16 being greater than necessary, sentence in this case.

17 Have I left anything out, anything that has not
18 been addressed, anything either side thinks that I
19 have missed?

20 MR. WARWICK: Nothing by the government.

21 MR. PURPURA: Nothing by the defense. Thank
22 you, Your Honor.

23 Unrelated to this, when the Court finishes, can
24 we approach the bench unrelated?

25 THE COURT: Yes.

1 Just to finish this, Mr. Naidu, of course, you
2 are entitled to appeal both the judgment, the
3 conviction, and the sentence in this case. You can
4 consult with Mr. Purpura about that. Any appeal needs
5 to be noted within 14 days. Again, I am sure counsel
6 will explain that to you.

7 Okay. Yes. I will be happy to see counsel on
8 an unrelated matter at the bench.

9 (The proceedings concluded.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing transcript in the matter of United States of America vs. Balraj Naidu, Defendant, Criminal Action No. CCB-08-0091, before the Honorable Catherine C. Blake, United States District Judge, on December 16, 2010 is true and accurate.

Gail A. Simpkins

Official Court Reporter

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